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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re HAMILTON S., a Person Coming Under the Juvenile Court Law.	B190628 (Los Angeles County Super. Ct. No. YJ26050)
THE PEOPLE, Plaintiff and Respondent, v. HAMILTON S., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephanie Davis, Juvenile Court Referee. Affirmed as modified.

Kiana Sloan-Hillier, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Robert F. Katz and Lauren E. Dana, Deputy Attorneys General, for Plaintiff and Respondent.

Hamilton S. appeals from an order sustaining a petition for modification under Welfare and Institutions Code section 777.[1] He contends that: (1) The juvenile court violated his Sixth Amendment right to confront and cross-examine witnesses, when it permitted his probation officer to testify about what his teacher and his grandmother told the probation officer. (2) There was insufficient evidence that he was in violation of two of the probation conditions. (3) Two of the conditions are unconstitutionally vague and overbroad, so they must be modified to include a knowledge requirement.

We modify the two conditions to include a knowledge requirement, and otherwise affirm.

PROCEDURAL HISTORY AND FACTS

A delinquency petition was filed in September 2004. It alleged that appellant, who was 15 years old, brought a BB gun onto his school ground.

A probation report indicated that appellant lived with his mother and four siblings. His father was deceased. His ethnicity was "Tongan/PI." He had no previous arrests. He was a full-time student in the 10th grade, with good attendance. His academic performance was average, with "C's" in all classes, except for an "A" in Fine Arts. He stated that he enjoyed playing football, and planned to attend college. He admitted the offense. He also said he had experimented with marijuana. His mother said she had a good relationship with him. The report recommended home on probation.

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[1] Welfare and Institutions Code section 777 provides in pertinent part: "An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private institution or commitment to a county institution . . . shall be made only after a noticed hearing."

All further code references are to the Welfare and Institutions Code unless otherwise stated.

Appellant admitted the petition in November 2004. The court ordered deferred entry of judgment. It placed appellant home on probation, with probation conditions that included:

"1. Obey all laws. Obey all orders of the Probation Officer and of any court."

"3. Report to the Probation Officer as directed.

"4. Notify the Probation Officer before changing address . . . ."

"9. Attend a school program approved by the Probation Officer. Maintain satisfactory grades and attendance, and citizenship. Promptly notify Probation Officer of every absence."

"14. Do not stay away from residence for more than 24 hours, nor leave Los Angeles County except at times and places specifically permitted in advance by the Probation Officer."

"16. Do not have any dangerous or deadly weapon in your possession, nor remain in the presence of any unlawfully armed person."

"21. Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where users congregate."

"28A. Make restitution to the Restitution Fund in the amount of $100.00."

"36. Participate in a program of counseling with and without parent/guardian."

On January 24, 2006, the probation department filed the petition for modification that is the subject of this appeal. It was written by Deputy Probation Officer Aisha Childs. Appellant, now 16, was detained pursuant to the petition. Count 1 alleged that he had violated conditions 1, 2, and 3, by failing to report to the probation officer on numerous specific dates from April 6, 2005, to December 13, 2005. Count 2 stated that he violated conditions 2 and 9, because he falsified a school report card, left town for a month, and was deficient in school credits. Count 3 stated that he violated condition 14, as he left the county throughout the period of supervision, to make unauthorized trips to the San Francisco Bay area, Las Vegas, and Tonga. Count 4 alleged that he violated conditions 21 and 23, because his urinalysis sample in June 2005 tested positive for amphetamine, and he admitted in August 2005 that he had been smoking marijuana and

drinking alcohol. Count 5 alleged a violation of condition 28A, because the outstanding restitution balance had not been paid. Count 6 alleged a violation of condition 36, as appellant had been referred to two counseling programs, but had not enrolled in counseling.

The petition for modification contained a statement from appellant's grandmother, but not from his mother. His grandmother said she had not responded to the probation officer's telephone calls because she had sent appellant temporarily to Tonga, to get him away from his Tongan friends here. Appellant had not attended school since September 2005. His grandmother wanted him to come home, but had no problem with his moving to the home of his older brother, in Lakeport, California. The older brother indicated that he wanted appellant to live with him, so that he could mentor and guide him.

Childs was the only witness at the hearing on the petition for modification. Appellant's mother was present at the hearing, but not his grandmother. Childs indicated at one point in her testimony that the grandmother was currently ill.

Under questioning by the prosecutor, Childs explained that appellant's case was assigned to her in December 2004. In June 2005, his urine tested positive for amphetamine. Before he took a drug test in August 2005, he wrote on a questionnaire that he had used alcohol and smoked marijuana and regular cigarettes. He failed to report to Childs eight times, beginning in April 2005. She left messages at his home, which were not returned. Childs had attached the school progress report to a probation report she submitted to the court for an earlier proceeding, but later learned from appellant's teacher that the progress report had been falsified. Appellant's grandmother and older sister told her that appellant was away from the area for a month and a half, and made unauthorized visits to Oakland, Las Vegas, and Tonga. His grandmother specifically said that she sent him temporarily to Tonga to get him away from the neighborhood. Childs did not think his grandmother could discipline him. He had not paid restitution, and had not enrolled in counseling.

On cross-examination, Childs admitted that appellant still had additional time, while on probation, to pay restitution. She testified that it was appellant who gave her the

school progress report. She thought it was a legitimate document, so she attached it to her court report. After that, she had spoken on the telephone with appellant's teacher, Miss Hector, and another person, Miss Dixie, whom she identified as a "para-educator." Childs faxed the progress report to Miss Hector, who then told Childs that the grades, attendance information, and her signature on the document were false.

At the proceedings below, the court looked at the falsified progress report, which was attached to a February 7, 2005 probation report that had been submitted to the court. After hearing arguments from counsel, it sustained the petition. It found that counts 1, 5, and 6 were true; count 2 was true as to presenting the probation officer with falsified documents; and count 3 was true as to the unauthorized trip to Tonga. It found count 4 not true, apparently agreeing with defense counsel's argument that there was a problem with the chain of custody for the urine sample. Proceeding immediately to disposition, it terminated the order of deferred entry of judgment and committed appellant to camp community placement for three months. This appeal followed.

DISCUSSION

1. Confrontation and Cross-examination

Before the juvenile court, appellant's counsel argued that his constitutional right to confront and cross-examine witnesses was violated, because Childs was allowed to testify about what appellant's family members and teacher said to her, even though that information was hearsay. That argument has been repeated on appeal. It lacks merit.

Subdivision (c) of section 777 explicitly states: "The court may admit and consider reliable hearsay evidence at the hearing to the same extent that such evidence would be admissible in an adult probation revocation hearing, pursuant to the decision in People v. Brown, 215 Cal.App.3d (1989) and any other relevant provision of law." Under the case cited in the statute, *People v. Brown*, *supra*, 215 Cal.App.3d 452, 454-455, hearsay may be used at revocation proceedings, as long as it bears sufficient indicia of reliability. Moreover, the lower court's determination on that issue will not be disturbed on appeal unless an abuse of discretion is shown.

Here, the statements by the teacher and family members corroborated each other regarding appellant's absence from school, and were further corroborated by physical evidence, the photocopy of the progress report. The teacher had viewed a fax of that report, and informed Childs that it contained false information, including a false signature. There was no reason for the teacher or the family members to lie. Childs was present in court and was fully cross-examined, so her credibility could be assessed. Since there were sufficient indicia of reliability regarding the out-of-court statements, the trial court did not abuse its discretion in permitting Childs to testify about them.

2. The Counseling and Restitution Conditions

Appellant complains that there was insufficient evidence for count 5, failure to pay restitution, and count 6, failure to participate in a program of counseling services, because he still had time to pay restitution and to enroll in a program of counseling before his period of probation ended.

Respondent concedes that the evidence was insufficient as to count 5, in view of Child's testimony that appellant still had time to pay restitution. Respondent maintains that there was sufficient evidence, under the preponderance of the evidence standard, for sustaining count 6, because Childs testified that appellant had not enrolled in counseling.

We need not consider this issue in detail, as there was sufficient evidence to justify sustaining the petition for modification, based on the other counts that were found true. (See *People v. Arreola* (1994) 7 Cal.4th 1144, 1161-1162.)

3. Adding the Knowledge Requirement

Appellant argues that, to avoid unconstitutional vagueness and overbreadth, a knowledge requirement must be added to probation condition Nos. 16 and 21, which require him to not remain in the presence of an unlawfully armed person and to stay away from places where narcotics users congregate. The argument is meritorious based on *In re Sheena K.* (2007) 40 Cal.4th 875, 889-892, which was decided after the briefing in this case. *Sheena K.* held that a probation condition that a minor "not associate with anyone 'disapproved of by probation' " was unconstitutionally vague, unless the words "known to be" were added before the words "disapproved of." (*Id.* at pp. 890-892.) *Sheena K.*

further held that the forfeiture rule of *People v. Welch* (1993) 5 Cal.4th 228 applies to the lack of an objection that a probation condition was unreasonable, but not to the lack of an objection that the condition was unconstitutional due to vagueness and overbreadth. (*Sheena K.*, *supra*, 40 Cal.4th at p. 889.) Based on *Sheena K.*, we modify the two conditions to include a knowledge requirement. (See *People v. Arreola*, *supra*, 7 Cal.4th at pp. 1161-1162.)

DISPOSITION

Probation condition No. 21 is modified to read: "21. Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where you know that users congregate."

Probation condition No. 16 is modified to read: "Do not have any dangerous or deadly weapon in your possession, nor remain in the presence of any person known to you to be unlawfully armed."

In all other respects, the juvenile court order is affirmed.

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FLIER, J.

We concur:

COOPER, P. J.

BOLAND, J.